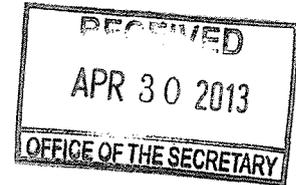


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

**HARD COPY**

ADMINISTRATIVE PROCEEDING  
File No. 3-15263



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In the Matter of

ZPR INVESTMENT MANAGEMENT, INC.  
AND MAX E. ZAVANELLI,

Respondents.

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RESPONDENTS' ANSWER TO ALLEGATIONS AND  
AFFIRMATIVE DEFENSES

I

Respondents, ZPR INVESTMENT MANAGEMENT, INC. ("ZPR") and MAX E. ZAVANELLI ("Zavanelli") (hereinafter collectively referred as "Respondents, by and through their undersigned counsel, and pursuant to Rule 220 of the Securities and Exchange Commission's Rules of Practice, 17 C.F.R. §201.220, hereby file their Answer to the allegations contained in the Securities and Exchange Commission's ("Commission") Order Instituting Administrative and Cease-And-Desist Proceedings ("Order") Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section

9(b) of the Investment Company Act of 1940 ("Investment Company Act") and state as follows:

II.A. SUMMARY

1. Respondents deny the allegations set forth in paragraph II.A.1 of the Commission's Order.

2. Respondents deny the allegations set forth in paragraph II.A.2 of the Commission's Order.

II.B. RESPONDENTS

1. Respondents admit the allegations set forth in paragraph II.B.1 of the Commission's Order except that ZPR, the corporate entity, was originally registered as an investment adviser with the Commission in 1994.

2. Respondents admit that Zavanelli is 66 years old, resides in Deland and acted as the president, chief operating officer and sole owner of ZPR from July 1994 until November 2011 and admit that Zavanelli provided all investment advice to ZPR's clients. Respondents also admit the remaining allegations contained in paragraph II.B.2 of the Commission's Order.

II.C. MISLEADING STATEMENTS

BACKGROUND

1. Respondents admit the allegations set forth in paragraph II.C.1 of the Commission's Order except that as of December 31, 2012, ZPR possesses discretionary authority over

approximately 105 client accounts with assets under management valued at approximately \$164,000,000. In addition, more than half of the assets under ZPR's management as of December 31, 2012, were institutional.

2. Respondents admit the allegations set forth in paragraph II.C.2 of the Commission's Order.

3. Respondents admit that in many of its advertisements, ZPR claimed compliance with the Global Investment Performance Standards ("GIPS") for its performance results. The GIPS standards are voluntary, are published and released by the CFA Institute and speak for themselves. Respondents, therefore, deny the remaining allegations set forth in paragraph II.C.3 of the Commission's Order to the extent that such allegations are inconsistent with the GIPS standards.

4. Respondents state that the GIPS standards speak for themselves and therefore, deny the allegations set forth in paragraph II.C.4 of the Commission's Order to the extent that such allegations are inconsistent with the GIPS standards.

#### MISLEADING MAGAZINE ADVERTISEMENTS

5. Respondents admit that ZPR advertisements published in *Smart Money* magazine between October and December 2008, standing alone, did not comply with GIPS Advertising Guidelines relating to ZPR's performance results, but deny the

remaining allegations set forth in paragraph II.C.5 of the Commission's Order. Respondents specifically deny that ZPR concealed any information from the advertisements to make them materially false or misleading. Respondents further claim that all ZPR performance results as required by GIPS, including period-to-date performance returns, were disclosed to prospective clients<sup>1</sup> between October and December, 2008, when the *Smart Money* magazine articles were published.

6. Respondents admit that ZPR advertisement published in the *Smart Money* magazine October 2008 issue, standing alone, did not comply with GIPS Advertising Guidelines relating to performance results, but deny the remaining allegations set forth in paragraph II.C.6 of the Commission's Order. Respondents specifically deny that ZPR concealed any information from the advertisement to make it materially false or misleading. Respondents further claim that all performance results required by GIPS, including period-to-date performance returns, were disclosed to prospective clients<sup>1</sup> at the time the October 2008 *Smart Money* magazine issue was published.

7. Respondents admit that the ZPR advertisement published in the *Smart Money* magazine November 2008 issue,

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<sup>1</sup> ZPR did not establish any new accounts from existing or prospective clients based upon the *Smart Money* magazine articles published between October and December 2008.

standing alone, did not comply with GIPS Advertising Guidelines relating to performance results, but deny the remaining allegations set forth in paragraph II.C.7 of the Commission's Order. Respondents specifically deny that ZPR concealed any information from the advertisement to make it materially false or misleading. Respondents further claim that all performance results required by GIPS, including period-to-date performance returns, were disclosed to prospective clients<sup>1</sup> at the time the November 2008, *Smart Money* magazine issue was published.

8. Respondents admit that ZPR advertisement published in the *Smart Money* magazine December 2008 issue, standing alone, did not comply with GIPS Advertising Guidelines relating to performance results, but deny the remaining allegations set forth in paragraph II.C.8 of the Commission's Order. Respondents specifically deny that ZPR concealed any information from the advertisement to make it materially false or misleading. Respondents further claim that all performance results required by GIPS, including period-to-date performance returns, were disclosed to prospective clients<sup>1</sup> at the time the December 2008, *Smart Money* magazine issue was published.

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<sup>1</sup> ZPR did not establish any new accounts from existing or prospective clients based upon the *Smart Money* magazine articles published between October and December 2008.

FALSE CLAIMS OF COMPLIANCE WITH GIPS IN

MAGAZINE ADVERTISEMENTS AND CLIENT NEWSLETTERS

9. Respondents admit that ZPR advertisements published in the February and May 2011 issues of *Smart Money* magazine and the March 2011 issue of *Barron's* magazine, standing alone, did not comply with GIPS Advertising Guidelines relating to performance results, but deny the remaining allegations set forth in paragraph II.C.9 of the Commission's Order. Respondents specifically deny that ZPR made any materially false or misleading claims through these advertisements and disclosed accurate performance results required by GIPS to prospective clients.

10. Respondents admit that ZPR distributed monthly newsletters to its clients and made these newsletters together with other information including GIPS compliant performance results available through ZPR's website, but deny the remaining allegations set forth in paragraph II.C.10 of the Commission's Order.

FALSE STATEMENTS REGARDING ITS GIPS VERIFICATION FIRM AND

THE SEC'S INVESTIGATION

11. Respondents admit that Ashland Partners & Company, LLP ("Ashland") resigned as ZPR's GIPS verification firm in July 2010 and that Ashland's last report attesting to

ZPR's compliance with GIPS was for the period ending December 31, 2009. Respondents also admit that the reference contained in the Morningstar report for the period ending September 30, 2010, that results for ZPR had been "audited for GIPS compliance for the period December 31, 2000 to present" by Ashland contained two (2) typographical errors. The term "audited" should have been replaced with "verified" and the relevant period for GIPS verification of ZPR's results by Ashland should have been "for the period December 31, 2000 through December 31, 2009." Respondents deny the remaining allegations set forth in paragraph II.C.11 and specifically deny that the Morningstar report represented an advertisement or was available to the public through the Morningstar website.

12. Respondents deny the allegations set forth in paragraph II.C. 12 of the Commission's Order.

#### II.D. VIOLATIONS

1. ZPR denies that it has willfully violated Section 206(1) or 206(2) of the Advisers Act.

2. Zavanelli denies that he has willfully violated Section 206(1) or 206(2) of the Advisers Act.

3. ZPR denies that it willfully violated and Zavanelli denies that he willfully aided and abetted or caused ZPR to violate either Section 206(4) of the Advisers Act or Rule

206(4)-1(a)(5) of the Advisers Act.

### III

A. Except as otherwise admitted through this Answer, Respondents specifically deny the Commission's allegations set forth in Section II of the Order and Respondents should be afforded an opportunity to establish defenses to such allegations.

B. ZPR has not violated any provisions of the Advisers Act and the public interest, therefore does not require any remedial action to be taken under Section 203(e) of the Advisers Act or any civil penalties to be assessed under Section 203 of the Advisers Act against ZPR.

C. Zavanelli has not violated any provisions of the Advisers Act and the public interest, therefore does not require any remedial action to be taken under Section 203(f) of the Advisers Act or any civil penalties to be assessed under Section 203 of the Advisers Act against Zavanelli.

D. There are no allegations set forth in the Commission's Order that give rise to any violation of the Investment Company Act by the Respondents. Therefore, no remedial action is appropriate to be taken in the public interest under Section 9(b) of the Investment Company Act including but not limited to, imposing civil penalties pursuant

to Section 9 of the Investment Company Act against the Respondents.

E. Respondents are not committing or causing violations and there is no basis to indicate that Respondents will cause or commit future violations of Sections 206(1), 206(2) or 206(4) of the Advisers Act or Rule 206(4)-1(a)(5) thereunder and consequently, there is no basis under Section 203(k) of the Advisers Act to order Respondents to cease and desist from any current or future violation of the Advisers Act.

#### V. AFFIRMATIVE DEFENSES

Respondents raise the following affirmative defenses in response to the allegations set forth in the Commission's Order:

##### 1. FULL AND FAIR DISCLOSURE

Each ZPR advertisement at issue published in *Smart Money* and *Barron's* magazines referenced and incorporated the ZPR website which included GIPS composite performance results for the ZPR Small Cap Value, Global Equity and All Asian composites. These results included period to date and annualized 1, 3 and 5 year composite performance returns with the end of period date clearly identified or 5 years of annual composite performance returns as required by GIPS. The *Smart Money* and *Barron's* magazine advertisements at issue together with information

published by ZPR through its website therefore satisfied the GIPS Advertising Guidelines. The ZPR composite performance results that were published on its website had also been verified for compliance with GIPS standards by Ashland between December 31, 2000 and December 31, 2009, and by Alpha Performance Verification Services from December 31, 2009 to December 31, 2011. Between October 2008 and May 2011 when the Smart Money and Barron's advertisements at issue ran, the relevant ZPR composite performance returns that satisfied GIPS standards were disclosed by Respondents to each prospective client before any account was established with ZPR. Respondents provided full and fair disclosure of ZPR's composite performance returns as required by GIPS on an ongoing basis to existing and prospective clients of ZPR.

## 2. LACK OF MATERIALITY

The claim of GIPS compliance by ZPR through the advertisements published in *Smart Money* and *Barron's* magazines at issue did not constitute a material misrepresentation under sections 203(1), 203(2), 203(4) or Rule 206(4)-1(a)(5) of the Advisers Act, since the information contained in the magazine issues was supplemented and clarified by GIPS compliant composite performance results for ZPR that Respondents disclosed on the ZPR website.

3. LACK OF SCIENTER

Respondents did not act with scienter at any time when the advertisements at issue were published in *Smart Money* or *Barron's* magazine or through any claim made by Respondents that ZPR complied with GIPS standards. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 84 S.Ct. 275, IIL. Ed 2d 237 (1963)

4. GOOD FAITH

Respondents utilized their best efforts and acted in good faith to comply with GIPS standards including, but not limited to, the GIPS Advertising Guidelines. Respondents reasonably believed that all composite performance results for ZPR were disclosed or made available to existing and prospective customers of ZPR and complied with GIPS standards.

5. LACK OF CAUSATION

Any mistake made by or wrongdoing on the part of the Respondents did not cause or result in any harm to the public interest. Accordingly, no remedial action including but not limited to civil penalties should be imposed or assessed against the Respondents under Sections 203, 203(e) or 203(f) of the Advisers Act or under Sections 9 and 9(b) of the Investment Company Act.

6. STATUTE OF LIMITATIONS

No sanctions that are penal in nature including but not limited to any civil remedies, may be imposed on the Respondents that are based on conduct occurring more than five (5) years before the Commission's Order. Johnson v. SEC, 87 F. 3d 484 (D.C. Cir 1996); 28 U.S.C. §2462.

April 29, 2013

Respectfully submitted.

  
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